

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
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Rockville, Maryland 20850  
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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6136**

**PETITION OF PAUL PATEL**  
(Hearing held May 31, 2006)

**OPINION OF THE BOARD**  
(Effective date of Opinion, July 21, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-9.45. The petitioner proposes the construction of an accessory structure (detached garage) in the front yard. Section 59-C-9.45 requires accessory structures to be located in the rear yard only.

Sandra Gross appeared with the petitioner at the public hearing.

The subject property is Lot 7, Block 1, Haines Addition to Damascus Subdivision, located at 9118 Gue Road, Damascus, Maryland, 20872, in the RE-2C Zone (Tax Account No. 07820814).

Decision of the Board: Requested variance **denied.**

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of a 40 x 60 foot detached garage.
2. Ms. Gross testified that the proposed garage will be located on an existing, gravel pad that is currently used as the property's parking area. Ms. Gross testified that the subject property is unique because it is a pipe-stemmed lot and that no other lot in the immediate neighborhood shares this characteristic. Ms. Gross testified that the pipe-stem serves as the property's driveway and that the driveway is 674 feet in length. Ms. Gross testified that the driveway is shared with the neighbors to the north of the subject property.
3. Ms. Gross testified that another unique characteristic of the subject property is the amount of steep slopes located on the lot and that the

property's sloped areas comprise 28% of its total area. Ms. Gross testified that the subject property is a 5 acre lot, surrounded by properties that are 2 to 6¾ acres in size. See Exhibit 10 [zoning vicinity map].

4. Ms. Gross testified that the property adjoins the Patuxent River and that it is located in the Patuxent River Watershed, which limits the amount of impervious area that can be located on the property. Ms. Gross testified that the subject property is limited to 10% of impervious area and that currently the property's impervious area is at 9½%. Ms. Gross testified that the design of the proposed construction works within the environmental constraints imposed on the lot and that the new construction would replace the existing parking area with a detached garage without exceeding the impervious area limitation.

### **FINDINGS OF THE BOARD**

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that while the pipe-stem shape of the subject property is not shared with another property in the petitioner's immediate neighborhood, the subject property is a 5 acre lot in a neighborhood of mostly 2 acre lots. The Board finds that the subject property significantly exceeds the minimum lot size for the zone and that aside from the pipe-stem access to the property, the property is rectangular in shape.

The Board finds that whereas the 10% impervious area limitation is an environmental consideration, it is not a circumstance that the Board can take into account in its consideration an application for the grant of a variance. The Board finds that the characteristics of the petitioner's lot are not "conditions peculiar to a specific parcel of property" that cause the strict application of the Zoning Ordinance to have a disproportionate impact on the subject property. The Board notes that the new construction could be located elsewhere on the subject property without the need for a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance to permit the construction of an accessory structure/detached garage in the front yard is denied.

The Board adopted the following Resolution:

On a motion by Donna L. Barron, seconded by Caryn L. Hines, with Allison Ishihara Fultz, Chair, in agreement, and with Wendell M. Holloway and Angelo M. Caputo, in opposition, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 21st day of July, 2006.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.